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DEC 29 2010

OFFICE OF PETITIONS

In re Patent No. 7,739,233 : DECISION ON REQUEST FOR
GHEMAWAT et al. : RECONSIDERATION OF
Issue Date: June 15, 2010 : PATENT TERM ADJUSTMENT AND
Application No. 10/608,139 : NOTICE OF INTENT TO ISSUE
Filed: June 20, 2003 : CERTIFICATE OF CORRECTION
Attorney Docket No. 0026-0029 :

This is a decision on the petition filed on August 16, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two thousand eight hundred forty (2840) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The term of the above-identified patent is extended or adjusted by **one thousand nine hundred thirty (1930) days**.

37 CFR 1.703(b) indicates that the period of adjustment under 37 CFR 1.702(b) ("over three year period") is the number of days, if any, in the period beginning on the day after the date that is three years after the actual filing date of the application and ending on the date a patent was issued. 35 U.S.C. 154(b)(1)(B). However, 37 CFR 1.703(b) also sets forth the limitations on patent term adjustment specified in 35 U.S.C. 154(b)(1)(B)(i) and (ii). Specifically, 37 CFR 1.703(b)(4) provides that the period of adjustment of the term of a patent shall not include the period equal to the sum of the period of pendency consumed by appellate review under 35 U.S.C. 134, 141,

145, whether successful or unsuccessful (35 U.S.C. 154(b)(1)(B)(ii)).

The Office agrees with patentee that the over three year period is 1446 days. However, patentee failed to account for the filing of the notice of appeal on March 1, 2007. The Office reminds patentee that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the period consumed by appellate review is 910 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, March 1, 2007, and ending on the date of the last decision by the Board of Patent Appeals and Interferences, August 26, 2009. 37 CFR 1.703(b)(4). Thus, the B delay is 536 days (1446 - 910). Accordingly, the patent term adjustment is 1930 days (512 days of A delay + 536 days of B delay + 910 days of C delay - 28 days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

The Office will charge the Deposit Account for the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fee is due.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand nine hundred thirty (1930) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT: 7,739,233 B1

DATED: Jun. 15, 2010

DRAFT

INVENTOR(S): GHEMAWAT et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1726 days.

Delete the phrase "by 1726 days" and insert – by 1930 days--